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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,066	01/04/2002	John M. Shamoun	12457-0002/JWE	9125
34284	7590	01/21/2004	EXAMINER	
ROBERT D. FISH; RUTAN & TUCKER, LLP			MATTHEWS, WILLIAM H	
P.O. BOX 1950			ART UNIT	PAPER NUMBER
611 ANTON BLVD., 14TH FLOOR			3738	
COSTA MESA, CA 92628-1950			DATE MAILED: 01/21/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/039,066	SHAMOUN, JOHN M.
	Examiner William H. Matthews (Howie)	Art Unit 3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 09 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

1. Claims 11,19, and 20 are objected to because of the following informalities described in the last office action:

Claim 11 should recite in subsection M), "yes" and "no" as answers. Subsections I) and N) contain answers that should begin on a new line.

In line 5 of claim 19, ---to--- should be inserted after "answers".

In line 5 of claim 20, "work" should be deleted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massengill US 2002/0064302 and in view of Broderick et al. US 2003/0007123 or Onyshkevych et al. US PN 6,665,577.

Massengill discloses in abstract, paragraphs [0026], [0030]-[0034],[0048], and [0051] a method of providing a preview image of a cosmetic surgery procedure for the nose or breasts comprising asking multiple choice questions (including measurements) and using the answers over a network to form the image.

With regard to the newly added limitation to independent claims 1, 19, and 20, Massengill lacks the express written disclosure of performing the method without using an image of the patient.

Broderick et al. discloses in paragraphs [0051], [0054]-[0056],[0058],[0060], and [0063]-[0065] a method of providing a preview image of a cosmetic procedure for the eyes comprising asking multiple choice questions and using the answers over a network to form the image from a database of pre-existing images for the patient to select from and modify.

Onyshkevych et al. discloses in lines 1-18 of col. 16, lines 60 of col. 19 through line 5 of col. 20, and lines 43-53 of col. 22 a method of providing internet based transactions, including cosmetic surgery, in which the user may answer qualitative and/or quantitative questions to produce a digitized image from a database or select a similar image from a database in order to serve users unwilling to provide an actual physical image.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method disclosed by Massengill by using images not from the patient as taught by either of Onyshkevych and Broderick et al. in order to serve patients unwilling to provide an actual physical image.

With specific regard to claim 13, Massengill lacks the express disclosure of asking for the specific breast measurements described in claim 13. However, in the art of cosmetic surgery, it would have been obvious, if not inherent, to ask for measurements of the patient's breasts in order to provide pre-operative and post-operative comparison for the patient when performing breast enhancement procedures.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method disclosed by Massengill by including the step of asking for specific breast measurements in order to provide pre-operative and post-operative comparison for the patient when performing breast enhancement procedures.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Mon-Fri 7:00-4:30 (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
WHM  
January 9, 2004

  
David J. Isabella  
Primary Examiner